IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

OP.No. 36246 of 2000(M)

PETITIONER:

M.J. DEVASSIA, HILL PRODUCE DEALER, PADICHIRA P.O.,
PULPALLY, WAYANAD DIST.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS:
---

1. ADDL. AGRICULTURAL INCOME TAX AND SALES TAX OFFICER,
SULTHAN BATHERY.

2. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 14/11/2007 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 61761 OF 2000 IN OP 36246 OF 2000

DISMISSED

14.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE APPELLATE ORDER PASSED BY ADDL. APPELLATE ASST. COMMISSIONER II DATED 8.9.1997 FOR THE YEAR 1987-88

EXT.P2 TRUE COPY OF THE REVISED ASSESSMENT ORDER PASSED BY THE FIRST RESPONDENT DATED 23.9.2000

EXT.P3 TRUE COPY OF THE ORDER CMP 38616 OF 1999 IN OP 23192 OF 1999 DATED 17.9.1999 PASSED BY THIS HON'BLE COURT.

EXT.P4 TRUE COPY OF THE RECEIPT OF PAYMENT ISSUED BY THE FIRST RESPONDENT DATED 17.11.2000

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 36246 OF 2000

Dated this the 14th day of November, 2007

JUDGMENT

Petitioner is challenging Ext.P2 whereunder turnover tax and interest thereon are demanded. So far as the challenge against turnover tax is concerned, it is not maintainable as the demand is raised on the turnover from 1.7.1987 to 31.3.1988 which is in accordance with appellate order. Even though interest is not quantified, there is a statement in Ext.P2 that interest will be payable from May, 1988 onwards. Counsel has relied on the decision of this Court in O.P.No. 23192 of 1999 and contended that no interest could be demanded prior to the actual period of default. Turnover tax in this case is demanded based on revised assessment issued after assessment was modified by the Deputy Commissioner in proceedings under Section 35 of the KGST Act. It is seen in Ext.P2 assessment order that assessment was made in accordance with Deputy Commissioner's order on 27.1.1995. This order was challenged in appeal and the final revised order is Ext.P3. Interest under Section 23(3) is payable for the tax as finally

sustained, but from the date of default after service of notice of demand pursuant to assessment order dated 27.1.1995. The assessing officer is directed to recompute the interest on turnover tax of Rs. 19, 798/- from the date of default after service of assessment completed on 27.1.1995.

O.P. is disposed of as above.

(C.N. RAMACHANDRAN NAIR)
Judge